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Attorneys for Plaintiff and
Counterclaim Defendant

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – ROYBAL**

NOVA ORTHO-MED INC., a
California corporation,

Plaintiff,

v.

ARYA FARINPOUR, an individual,
and DOES 1 - 10,

Defendant.

Case No. 2:15-CV-7422-RGK-AFM

ANSWER TO COUNTERCLAIM

Date: Jan. 25, 2015
Time: 9:00 a.m. (PST)
Place: Courtroom 850

ARYA FARINPOUR, an individual,
Counter-claimant,

v.

NOVA ORTHO-MED INC., a
California corporation,

Cross-defendant.

Case filed: September 22, 2015
Trial date: T.B.D.
Judge: Hon. R. Gary Klausner

1 Counterdefendant Nova-Ortho Med, Inc. (“Counterdefendant”) hereby
2 responds to Counterclaimant Arya Farinpour’s (“Counterclaimant”) Counterclaim as
3 follows:

4 1. Counterdefendant states that the allegations set forth in Paragraph 87 of
5 the Counterclaim purport to state legal conclusions. Counterdefendant lacks
6 sufficient information to form a belief as to the truth of the allegations, and on that
7 basis denies those allegations.

8 2. Counterdefendant lacks sufficient information to form a belief as to the
9 truth of the allegations set forth in Paragraph 88 of the Counterclaim, and on that
10 basis denies those allegations.

11 3. Counterdefendant states that the allegations set forth in Paragraph 89 of
12 the Counterclaim purport to state legal conclusions. Counterdefendant lacks
13 sufficient information to form a belief as to the truth of the allegations, and on that
14 basis denies those allegations.

15 4. Counterdefendant states that the allegations set forth in Paragraph 90 of
16 the Counterclaim purport to state legal conclusions. Counterdefendant lacks
17 sufficient information to form a belief as to the truth of the allegations, and on that
18 basis denies those allegations.

19 5. Counterdefendant states that the allegations set forth in Paragraph 91 of
20 the Counterclaim purport to state legal conclusions. Counterdefendant lacks
21 sufficient information to form a belief as to the truth of the allegations, and on that
22 basis denies those allegations.

23 6. Counterdefendant lacks sufficient information to form a belief as to the
24 truth of the allegations set forth in Paragraph 92 of the Counterclaim, and on that
25 basis denies those allegations.

26 7. Counterdefendant lacks sufficient information to form a belief as to the
27 truth of the allegations set forth in Paragraph 93 of the Counterclaim, and on that
28 basis denies those allegations.

1 8. Counterdefendant lacks sufficient information to form a belief as to the
2 truth of the allegations set forth in Paragraph 94 of the Counterclaim, and on that
3 basis denies those allegations.

4 9. Counterdefendant lacks sufficient information to form a belief as to the
5 truth of the allegations set forth in Paragraph 95 of the Counterclaim, and on that
6 basis denies those allegations.

7 10. Counterdefendant denies the allegations set forth in Paragraph 96 of the
8 Counterclaim.

9 11. Counterdefendant denies the allegations set forth in Paragraph 97 of the
10 Counterclaim.

11 12. Counterdefendant states that the allegations set forth in Paragraph 98 of
12 the Counterclaim purport to state legal conclusions. Counterdefendant lacks
13 sufficient information to form a belief as to the truth of the allegations, and on that
14 basis denies those allegations.

15
16 **AFFIRMATIVE DEFENSES**

17 Counterdefendant sets forth below its affirmative defenses. By setting forth
18 these affirmative defenses, Counterdefendant does not assume the burden of proving
19 any fact, issue, or element of a cause of action where such burden properly belongs
20 to Counterclaimant. Moreover, nothing stated herein is intended or shall be
21 construed as an acknowledgment that any particular issue or subject matter is
22 necessarily relevant to Counterclaimant's allegations. As separate and distinct
23 affirmative defenses, Counterdefendant alleges as follows:

24
25 **FIRST AFFIRMATIVE DEFENSE**

26 **UNCLEAN HANDS**

27 Counterclaimant is not entitled to the relief Counterclaimant seeks under the
28 doctrine of unclean hands, including, without limitation, Counterclaimant's

1 improper acts both before and after Counterdefendants' filing of the underlying
2 complaint in this action.

3
4 **SECOND AFFIRMATIVE DEFENSE**

5 **FAILURE TO MITIGATE**

6 Counterclaimant is not entitled to the relief Counterclaimant seeks to the
7 extent that Counterclaimant has failed to take actions to mitigate damages.

8
9 **THIRD AFFIRMATIVE DEFENSE**

10 **PRIOR MATERIAL BREACH**

11 Counterclaimant is barred from recover because Counterclaimant materially
12 breached any purported contract prior to any purported breach by Counterdefendant.

13
14 **FOURTH AFFIRMATIVE DEFENSE**

15 **NO BREACH OF CONTRACT**

16 Counterclaimant is barred from recover because Counterdefendant did not
17 breach any purported contract between Counterclaimant and Counterdefendant.

18
19 **FIFTH AFFIRMATIVE DEFENSE**

20 **UNJUST ENRICHMENT**

21 Counterclaimant would be unjustly enriched in that Counterclaimant would
22 receive more than owed to Counterclaimant by Counterdefendant (if anything)
23 should Counterclaimant receive any award in this action.

24
25 **SIXTH AFFIRMATIVE DEFENSE**

26 **ACQUIESCENCE**

27 Counterclaimant is not entitled to the relief Counterclaimant seeks under the
28 doctrine of acquiescence.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **ESTOPPEL**

3 Counterclaimant is not entitled to the relief Counterclaimant seeks under the
4 doctrine of estoppel.

5
6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **WAIVER**

8 Counterclaimant is not entitled to the relief Counterclaimant seeks under the
9 doctrine of waiver.

10
11 **NINTH AFFIRMATIVE DEFENSE**

12 **SUFFICIENCY OF CONSIDERATION**

13 Counterclaimant is not entitled to the relief Counterclaimant seeks because
14 Counterclaimant received sufficient consideration.

15
16 **RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES**

17 Counterdefendant hereby gives notice that Counterdefendant intends to rely
18 upon such other and further affirmative defenses as may become available during
19 discovery proceedings in this case and hereby reserves rights to amend this Answer
20 to assert such defenses.

21
22
23 **WHEREFORE**, having fully defended, Counterdefendants pray for
24 judgment as follows:

- 25 1. That Counterclaimant take nothing by its Counterclaim, and that the
26 Counterclaim be dismissed with prejudice;
27 2. That Counterdefendant be awarded costs of suit, including reasonable
28 attorneys' fees; and

1 3. For such other and further relief as the Court deems just and proper.

2
3
4 Dated: February 11, 2016

Respectfully submitted,

THE KINDER LAW GROUP, APC

5
6 By:



Brian P. Kinder, Esq.
Attorney for Plaintiff and Counterclaim
Defendant Nova Ortho-Med, Inc.

DEMAND FOR JURY TRIAL

Counterdefendants demand a trial by jury on all issues triable by jury.

Respectfully submitted,

Dated: February 11, 2016

THE KINDER LAW GROUP, APC

By:



Brian P. Kinder, Esq.
Attorney for Plaintiff and Counterclaim
Defendant Nova Ortho-Med, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 11, 2016, the foregoing ANSWER TO COUNTERCLAIM was filed electronically with the Clerk of the Court via the CM/ECF filing system, to be served by operation of the Court's electronic filing system upon the following recipient:

John P. Bryne, Esq.
The BryneLaw Office
24011 Ventura Blvd., Suite 201
Calabasas, CA 91302

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 11, 2016 /s/ _____
Brian P. Kinder, Esq.